

CRIMINAL LAW (LCRM2604)
CASE LAW: SECOND (2ND)
SEMESTER

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Role players (ACCESSORIES AFTER THE FACT)

S v Terblanche

Facts: Accused 1 shot the deceased. Terblanche (the appellant) had helped Accused 1 to drag the dead body some distance (almost 2km) away from the premises. The assistance was substantial and directed at preventing the apprehension and subsequent prosecution of Accused 1. Terblanche was convicted in the trial court of being **an accessory after the fact** and sentenced to **eight** years' imprisonment. He appealed.

Legal Question:

- 1) Was he correctly convicted as **an accessory after the fact**?
- 2) Was the **sentence** appropriate?

Decision of the Court and reason for the decision:

- 1) Yes, conviction of **an accessory after the fact was** confirmed. Reason: There was a substantial contribution on the side of Terblanche to help Accused 1 to **escape liability or evade justice**
- 2) The sentence of **eight** years' imprisonment was set aside and replaced by a sentence of **five** years' imprisonment.

Participation in crime - common purpose

S v Thebus (doctrine of common purpose)

Facts

A group of protesting residents in Cape Town gathered and approached the houses of several drug dealers in the area. They damaged the property of Cronje (one of the alleged drug dealers). Cronje opened fire and some of the members fired back. In the crossfire, a seven (7) year old girl was killed, and two (2) others injured. Two members of the group were arrested. Both were convicted of murder and two charges of attempted murder based on the doctrine of common purpose. The accused argued that the existence of the doctrine of common purpose was unconstitutional (based

on the fact that the State did not have to prove the element of causation) and the matter was referred to the Constitutional Court.

Legal Question

Whether the doctrine of common purpose violates section 35 of the Constitution?

Decision

No, the doctrine of common purpose does not violate section 35 of the Constitution.

Reason

The doctrine of common purpose is necessary and serves a legitimate purpose. It protects the community against crimes committed by groups.

S v Molimi

Facts: A number of robbers executed a robbery at a store in a big shopping complex. They robbed money from a security officer who had to transport money from the shop to the bank. While the robbers were leaving the shopping centre, there was shoot-out between them and the security officers. One of the security officers and one of the robbers were killed. A, who happened to be in the shop, ran after one of the robbers (R) who ran into another shop to protect himself. Inside that shop R took Y, who happened to be in the shop, hostage. A told R to let go of Y, but he refused. A fired a shot that killed Y (the hostage). Thereafter robber R surrendered. Three of the robbers were charged with and convicted of many crimes including the **murder** of Y.

Legal question:

Whether the other 2 robbers (not robber R) could also be convicted of the **murder** of hostage Y.

Decision and reason for the court's decision:

No, their conviction of the **murder** of Y was **set aside**

Reason:

They could not **foresee** the death of Y as a possibility. It is foreseeable that in the execution of a robbery, someone on the scene may die – but what has happened in the other store with regards to the hostage was **too remote**. They could not **foresee** that!

S v Tsotetsi

Facts: Appellant was convicted of **murder** in the regional court based on the **doctrine of common purpose**. She was sentenced to life imprisonment. Evidence indicated

that after her daughter's / niece's phone was stolen from her, a mob caught the suspect/deceased and brought him to her house – bound and naked (and already severely assaulted by this time). Appellant was observed with a pair of pliers in her hand with which she assaulted the deceased, possibly removing some of his teeth. She appealed.

Legal question

- 1) Whether the **doctrine of common purpose** was applicable to the appellant in this case? (Was the accused correctly convicted of **murder**?)
- 2) Was the **sentence** appropriate?

Decision 1)

No, the conviction of **murder** was replaced with one of **attempted murder**

- 2) No, the **sentence** was reduced to **eight** year's imprisonment (of which 4 years were suspended)

Reason for decision

- 1) There was insufficient evidence to find that appellant was part of the original decision to severely assault the deceased or that she actively associated with the assault before he was brought to her home or that she inflicted the blow to the deceased's head that caused his death. The appellant was only a **joiner-in**
- 2) The **sentence** was reduced as a result of the replacement of **murder** with a conviction of **attempted murder**.

Attempt

S v Phiri

Facts: The appellant was convicted of **attempted** in the trial court (regional court) and sentenced to 6 years imprisonment. The charge arose from the appellant having had **unprotected sexual intercourse** with the complainant knowing that he was HIV positive. He appealed against the conviction and sentence. The appellant and the accused met at the local clinic where the accused was employed as a councillor and was responsible for the HIV testing. The test was negative. A love relationship developed between the accused and the complainant and they had **unprotected sexual intercourse**. When she went for another HIV test, it turned out to be positive. She confronted the accused and he then admitted that he was HIV positive and begged for her forgiveness. She took the matter to the police. He was convicted of **attempted murder** and appealed.

Legal question 1) Whether he was correctly convicted of **attempted murder**?

2) Whether the sentence was appropriate

Decision and reason for the decision:

1) Yes, the conviction of **attempted murder** was confirmed.

Reason: He had intention in the form of *dolus eventualis* – conduct went beyond a point of mere preparation. 2) Yes, sentence of 6 years imprisonment appropriate. There were mitigating and aggravating factors. Mitigating: first offender, HIV positive
Aggravating – councillor at HIV clinic

S v Schoombie

Facts: Accused went to a shop in the early hours of the morning, taking with him petrol and a tin containing inflammable material. He placed the tin against the door of the shop and poured petrol into the tin and around it in such a way that the petrol ran under the door into the shop. He was at this stage interrupted by the arrival of a police officer. The accused was convicted of **attempted arson** and appealed.

Legal question:

Did the conduct of the accused **go far enough** to be convicted of **attempted arson**?

Decision and reason for decision:

Yes, the conviction of **attempted arson** was confirmed.

Reason:

By the time that the accused was interrupted he had the **intention** to commit the crime and he was also done with all the **preparations** to commit the crime.

S v Davies

Facts:

The accused, 2 medical doctors were convicted of **attempt to abort** the pregnancy of a woman. The legal position at the time when the doctors have committed this act, was that it is only a crime to abort a living foetus. However, the evidence disclosed that the foetus had died before the accused had attempted to perform the abortion. They appealed against the conviction.

Legal question:

Can they be convicted of **attempted abortion** if what they were attempting to do was **impossible?**

Decision and reason for decision:

Yes, the conviction of **attempted abortion** was confirmed.

Reason:

It does not matter whether the conduct was relatively or absolutely **impossible**. Intention to commit the crime is required and the conduct should go far enough – beyond a point of mere **preparations**. These requirements were met.

CONSPIRACY AND INCITEMENT

S v Sibuyi

Facts: The appellants were prosecuted in the regional court of 28 charges of **theft** (they **stole** parts of bearings from train trucks) and 1 of conspiracy to commit theft. In the regional court, they were convicted of only 4 charges of theft and instead of conspiracy, they were convicted of attempted theft. They appealed to the High Court where these convictions were confirmed. They then appealed to the Supreme Court of Appeal.

Legal question:

1) Whether they were correctly convicted of **theft**?

2) More importantly, whether the conviction of **attempted theft** was correct?

Decision and reason for the decision:

1) The convictions of **theft** were set aside. Reason: The evidence did not correspond with the dates on the charge sheet.

2) The conviction of **attempted theft** was incorrect and replaced with **conspiracy to commit theft**

Reason:

It was only clear that there was an **agreement** to commit **theft**. It could not be proven that they were already done with all the **preparations** to commit the crime of **theft** and that is required for a conviction of **attempted theft**

S v Dick

Facts: The accused **incited** a man to give a certain herb to a woman in the hope that it would cause her to return to him. If that failed, he requested the man to **murder** her by the administration of DDT (insecticide powder) which he gave the man. The accused was not aware that the quantity of the DDT given was not enough to **kill** a person.

Legal question:

Whether the accused can be convicted of **incitement**: If the request is subject to a **condition**. If the request is based on a **mistake of fact**?

Decision:

Yes, to both questions. A person can be convicted of **incitement** even if the request (to **kill** in this case) is based on a **condition** (only if she does not return to the accused) and even if there was a **mistake of fact** (the amount of DDT that was insufficient).

Reason:

The **communication** has reached the other party and there was intention, he **foresaw the possibility** that the victim might be **killed**.

Unit 10-11

Murder and culpable homicide

S v Mshumpa

Facts: Accused 1 (father of the unborn child of complainant) and Accused 2 agreed to end the life of the complainant's **UNBORN BABY (THE UNBORN BABY WAS THIRTY-EIGHT WEEKS)**. Accused 1 arranged with Accused 2 to shoot both himself (in the shoulder) as well as the complainant in the abdomen with the purpose of killing the **UNBORN BABY**. The plan was to be executed in a way that made it look like a kidnapping and robbery. On the morning of 14 February 2006, Accused 2 (Mshumpa) indeed approached the couple and shot Accused 1 in the shoulder and the complainant (twice) in the stomach. Accused 2 then took off with certain items of Accused number 1, including his watch. Accused 1 then got back into the car and managed to drive the complainant and himself to the hospital. Both were fortunate and survived, but the unborn baby died. Accused 1 and 2 were prosecuted of various charges including the **MURDER** of the **UNBORN BABY**

Legal question: Whether it was appropriate for the court to develop the common law so to include the killing of an **UNBORN BABY** in the definition of murder?

Decision and reason for court's decision: No, but both Accused 1 and 2 convicted of **ATTEMPTED MURDER** of the complainant. They both **FORESAW** the causing of death of the complainant with the attempt to kill the **UNBORN BABY**. The current definition of murder refers to the unlawful and intentional killing of another person, born alive. The extension of the definition to include an **UNBORN BABY**, will be against the principle of **LEGALITY**. The fact that the complainant was **PREGNANT** served as an **AGGRIVIATING** factor in sentencing the accused.

Ex Parte the Minister of Justice: In re S v Grotjohn

Facts: The accused's wife indicated that she wished to commit **SUICIDE**. She was in a wheelchair and suffered from depression. On the day of the incident, her husband handed her a loaded gun, saying that she should shoot herself because she was a burden. She took the gun and shot herself. The accused was charged with **MURDER** but **HE WAS ACQUITTED**.

The Minister of Justice referred the following questions to the Supreme Court of Appeal:

Legal question for court to answer 1. Does a person who instigates, assists or puts another person in a position to commit **SUICIDE**, commit a crime? 2. If so, what crime?

Other legal questions: Is **SUICIDE** a crime? ; Was there a sufficient **CAUSAL LINK** between the conduct of the accused and the death of his wife as the last act was her own and independent?)

Decision of court: 1) Yes, a persons who instigates, assists or puts another person in a position to commit **SUICIDE**, is guilty of a crime. 2) Depending on the circumstances (type of fault present), such a person may be guilty of **MURDER**, **CULPABLE HOMICIDE** or **ATTEMPTED MURDER** in the case where the attempt is unsuccessful.

Decisions of other legal questions: **SUICIDE** is not a crime; There was a sufficient **CAUSAL LINK** between the conduct of the husband and death of woman irrespective of the fact that the very last act was her own independent act.)

S v Burger

Facts: The accused assaulted the victim by kicking him **IN AND BELOW THE STOMACH**. The victim was only 19 years old and small. The accused was much older and stronger and also **WEARING SHOES**. when he committed the offence. A few days later, the victim died. The accused was convicted of **CULPABLE HOMICIDE** and appealed against the conviction.

Legal question: Whether the accused was **NEGLIGENT** in causing the death of the victim?

Decision and reason for the decision: Yes, the conviction of **CULPABLE HOMICIDE** was confirmed.

Reason: A **REASONABLE PERSON** in the shoes of the accused would have foreseen the possibility of causing death in the circumstances. (The other legal question dealt with causation – not relevant)

S v Van

As Facts: During a quarrel, the accused gave D a **HARD SLAP** with his right hand on D's Cheek. D, who was a very fat man, lost his balance, fell backwards and hit his head on the cement floor. He became unconscious and died. The trial court convicted him of **CULPABLE HOMICIDE** He appealed against the conviction.

Legal question: Was the accused **NEGLIGENT** in causing the death of the victim?

Decision and reason for the decision: Conviction of **CULPABLE HOMICIDE** was replaced by one of **COMMON ASSAULT**.

Reason: The **REASONABLE PERSON** would not have foreseen the possibility of death.

Assault

S v Matle

Facts: The accused was a difficult man. On the day of the incident, he did not like the way that his girlfriend made his bed. He threw a cane at her – she ducked, and it hit and injured **his mother** standing behind her. A few days later his **mother** died due to pneumonia. He was prosecuted of culpable homicide but convicted of **assault with intent to cause grievous bodily harm**. He appealed.

Legal question: Did the accused have **intention** to injure his **mother**?

Decision and reason for decision: **No**, The conviction of **assault with intent to cause grievous bodily harm** as well as the sentence were set aside.

Reason; The state could not even prove **intention** in the form of **dolus eventualis** as the room was very small (3x3 meters). It was unlikely that the accused foresaw the possibility of missing his **girlfriend** and hitting his **mother**

S v Smith (example of ASSAULT WITH THE INTENT TO DO GRIEVOUS BODILY injuries and where indirect application of force was applied)

Facts: The accused was a **police officer** and part of a group of **police men** who set their **dog** upon 3 allegedly illegal immigrants as part of a training session. The victims sustained serious injuries. The accused was convicted of **ASSAULT WITH THE INTENT TO DO GRIEVOUS BODILY INJURY** and sentenced to 7 years imprisonment of which 2 years were suspended. He appealed against the sentence.

Legal question: Whether the **SENTENCE** was appropriate (fit and proper?) Decision and reason for the decision: **YES**, the sentence was **CONFIRMED**

Reason: Although this is a harsh sentence for **ASSAULT WITH THE INTENT TO DO GRIEVOUS BODILY INJURY**, the attack/conduct was **PREMEDITATED** and the accused have done damage to the image of the police.

Rape

S v SM

Facts: The appellant was convicted in a high court of, inter alia, **rape** and was sentenced to **fifteen** years imprisonment. He appealed against the conviction and sentence. The complainant was the appellant's adoptive daughter. She was adopted at the age of 15. A close and intimate relationship developed between the appellant and complainant. The appellant then started to demand privileges

from the complainant for allowing the complainant to contravene some of the grounding orders imposed by her mother. These privileges included kissing her, rubbing her breasts, touching her private parts and performing oral sex on him. Later that year he had sexual intercourse with her. The complainant objected but did not resist at the end because she felt that she had no choice but to go along with what he was doing. She testified that she had nowhere else to go and might have been returned to a place of safety, should she cause trouble for her adoptive family. It would also cause trouble for the church where the appellant was a senior pastor.

Legal question: 1) Whether the appellant had valid consent? 2) Whether the sentence was appropriate? Decision of court and reason for decision: 1) No, there was not valid consent. The conviction of rape was confirmed.

Reason : The appellant abused the power of authority that he had - complainant was entangled in a web of rewards and punishments at the hands of an elder whose intrusive conduct became increasingly difficult to resist. He had no real consent 2) Yes, the sentence was appropriate and confirmed. Reason: The trial court did not induce a sentence of shock.

S v Willemse

Facts: The accused (boy raised as part of the family) raped the victim one afternoon inside her home. The accused at first raped the victim vaginally and thereafter stopped, turned her on her side and raped her anally as well. He was convicted of two rape charges and given life imprisonment as sentence. He appealed against the conviction as well as the sentence.

Legal Question: 1) Whether the conduct of the accused amounted to two separate acts of rape 2) Whether the sentence was appropriate.

Decision and reason for decision: 1) Yes, the conviction two rape charges were confirmed

Reason: According to the court, there were two separate thought processes involved (he wanted to rape the victim in two different ways) which justifies the conviction of two rape charges. 2) The sentence was not appropriate

Reason: Due to mitigating factors the sentenced was reduced to twenty years imprisonment.

CRIMEN INIURIA

S v Sharp

Legal question: Was the dignity of the complainant impaired?

Decision: No, the use of this word did not amount to a violation of Y's dignity since the word formed part of everyday language

S v Holiday

Facts: The accused was lying on a **roof** and looking through a skylight while the complainant was **undressing**. She was informed about this by 2 pedestrians outside the building who saw the accused on the roof. He was convicted of **crimen iniuria** and appealed.

Legal question: Is it a requirement for conviction of **crimen iniuria** that the victim be **aware** of the violation of **privacy**?

Decision of the court and reason for the decision: Conviction of **crimen iniuria** was confirmed.

Reason: 1) **awareness** is not a requirement for conviction in the case where **privacy** is violated, only where **dignity** is violated. 2) This was a **serious** violation of **privacy**.

S v Momberg

Facts: The appellant had been convicted of **crimen iniuria** in that he said the following to the traffic officer: “**Jou lae donnerse bliksem, ag fock-off jou lae bliksem, jy is laer as ‘n donnerse vark.**” He uttered those words upon receiving a traffic ticket from the officer. The traffic officer was in **uniform**, with **another officer** and the incident took place in the **main street** of Mosselbay. The accused appealed against the conviction.

Legal question: Was the conduct of the accused **serious enough** for a conviction of **crimen iniuria**?

Decision of the court and reason for decision: Conviction of **crimen iniuria** was confirmed.

Reason: The conduct was **serious enough** because 1) the officer was in **uniform**, 2) it happened **in front** other people – in the **main street** of Mosselbay, 3) the officer was on **duty** and 4) the accused spoke **loudly**

S v Hoho

Facts: The appellant was convicted on **twenty-two charges** of **criminal defamation** for publishing several leaflets in which he defamed various persons. In these leaflets allegations of, amongst others, **fraud** and **corruption** were made. He appealed against the conviction.

Legal questions: 1. Does our law still recognize **criminal defamation** as a crime? 2. Is it constitutional to recognize **criminal defamation** as a crime? 3. Is **serious** an element of this crime? (**should only serious violations of reputation be referred to criminal courts**)?)

Decision: 1. **Yes**, **criminal defamation** is still a crime in our law. 2. **Yes**, the existence of **criminal defamation** as a crime is **constitutional**

Reason: The limitation of section **16** is **reasonable** and **justifiable** 3. **No**, not only **serious** cases of **criminal defamation** to be referred to criminal courts. The conviction of **criminal defamation** was **confirmed**

Kidnapping and Abduction

S v Mellors

Facts: The accused entered a **library** where he pointed a pistol at the **librarian** and ordered her to sit down. He then piled books against the door to prevent anyone entering or leaving the room. Later he ordered the **librarian** to make certain phone calls which she did. After **two and a half** hours, he gave himself up and allowed the **librarian** to leave the room. He was convicted of **kidnapping** the **librarian** and appealed.

Legal question: Whether the period of **two and a half** hours was long enough for a conviction of **kidnapping**?

Decision of the court and reason for the decision: Yes, conviction of **kidnapping** was confirmed.

Reason: The period was **long** enough and the victim was deprived of her **freedom of movement** during this period.

S v Sashi

S v Jezile

Facts: Accused prosecuted of **trafficking**, 3 x **rape** charges and 2 **assault** charges. He was looking for his ideal wife (a virgin younger than 18), noticed the complainant (only 14 years old) and decided that she will be a suitable wife. He then asked his family to start lobola negotiations with complainant's family. Lobola of **R8 000** was paid by the appellant to the complainant's maternal grandmother – who gave it to the complainant's mother at a later stage (mother did not approve marriage negotiated by male members of the family). The complainant also did not want to marry the appellant (she just started grade 7) and ran away from her new marital home a few days into marriage – hiding in a forest and on another occasion, at a family member's house. Each time she was found and returned to the appellant - by her own male family members. Against her will, she was then transported by the appellant to **Cape Town** to live with his brother and sister in a shared home. In **Cape Town**, forced **sexual intercourse** took place (against the wishes of the complainant) and she was **assaulted** by the

appellant prior to the rape incidents. Appellant was convicted of all charges in the regional court and appealed.

Legal question: Whether the appellant had consent in terms of the practice of ukuthwala

Decision and reason for the court's decision: 1) The convictions of trafficking and rape were confirmed. 2) The appeal against the conviction of the assault charges succeeded

Reasons: 1) This was not a true instance of ukuthwala (young age of complainant / lack of consent). ukuthwala was abused to justify offensive behaviour such as rape. 2) Appeal against the assault charges succeeded because this conduct preceded the rape incidents and results in a duplication of charges.

Public violence

S v Mlotshwa

Facts: The accused, participants in a protected strike, joined at the main gates of their place of employment. An employee who was not on strike, drove up to the gates in a vehicle in which there were temporary workers. When she stopped in front of the gate, a group of strikers hit the vehicle, shouted and attempted to open the doors. The vehicle was completely surrounded. When the gates were opened, she drove through. The incident involved between ten and twenty persons and lasted about six to seven seconds. No damage/harm was done to the vehicle and no person was injured. They were convicted of public violence and appealed. Legal question: Did their conduct "assume serious dimensions?" Decision: The conviction and sentence were both set aside.

Reason: The conduct did not assume serious dimensions as the participants were unarmed, no harm was done to any person or to any property and the incident only lasted between six and seven seconds.

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

S v Bazzard

Facts The accused made a phone call to the police and told them that he had kidnapped a girl whom he was going to kill unless a ransom was paid to him. The police investigated the matter and traced the accused who then admitted to them that he had in fact not kidnapped anyone. He was convicted of obstructing the administration of justice and the case went on a review.

Legal question What justice (administration of justice) did he obstruct?

Decision: The conviction was **set aside**

Reason: He did **not obstruct** the administration of any justice. He did not falsely incriminate another or attempt to conceal a crime. There was no possibility of **prosecution** as no crime was committed.

S v Malianga

Facts The accused, who lied in court, had previously made a sworn statement to the police in which he admitted certain facts. In the trial, he gave evidence that **contradicted** this statement. He was convicted of **perjury** and appealed against the conviction and sentence.

Legal question: Whether he was correctly convicted of and sentenced for **perjury**?

Decision (based on conviction): The conviction of **perjury** was **confirmed**

Reason: Although it is **unusual** to prosecute someone who pleaded not guilty and who is later convicted, of **perjury**, the accused did make false statements under oath in the course of **judicial proceedings**

Decision (based on sentence): The appeal against the sentence was **successful**

Reason: The court usually takes into consideration the fact that the accused lied in court in pleading not guilty when they consider an appropriate sentence for the **original** offence committed.

R v Beukman (in the course of judicial proceedings)

Facts The accused made a false statement under oath to the police (**outside** the court). He was convicted of **perjury** and appealed.

Legal question Whether the conduct took place in the course of **judicial proceedings**?

Decision: The conviction **perjury** was **set aside**

Reason: The false statement was not made in the course of **judicial proceedings**

OFFENCES AGAINST PROPERTY

Theft

S v Cele

Facts: The accused was convicted in the district court of the **theft** of a **screwdriver** and pair of pliers. The accused had been apprehended one night in a street while in possession of these tools and explained to the police officer who arrested him that he had found the tools that night lying on the

ground at a bus/taxi rank and that he took them because he could use them at home. Case went on review.

Legal question: Did the state prove intention to steal property capable of being stolen?

Decision and reason for decision: No, conviction and sentence were set aside

Reason: The state did not exclude the possibility of an honest that the tools were abandoned (res derelictae).

S v Mostert

Facts: The 2 accused were charged with and convicted of various statutory offences in terms of the National Water Act as well as of theft and fraud (in the trial court). The charge of theft was based on the fact that they abstracted more water from a public river than legally entitled to. They appealed to the High Court where they were only acquitted of the theft and fraud charges. They then appealed to the Supreme Court of Appeal against the conviction of the statutory offences and the state cross appealed with regards to the acquittal on the theft and fraud charges.

Legal question: Is it possible to convict someone of stealing water from a public stream?

Decision of the court and reason for the decision: No, the acquittal of theft in the High Court was confirmed

Reason: water from a public stream is or qualifies as res communes (not capable of being stolen.)

Robbery

S v Yolelo

Facts: When the complainant returned to the house, she noticed a case on the floor of the bedroom. She entered the bathroom where 2 men attacked her and tied her up. She heard the men searching through the house and later attempting to start a vehicle. When the men departed it was established that certain items were missing from the house. The accused were convicted of robbery and appealed.

Legal question: Whether the violence should always precede the taking for conduct to qualify as robbery?

Decision of court and reason for decision: The conviction of robbery was confirmed

Reason: Normally the violence should precede the taking, but it may qualify as robbery if there was such a close link between the theft and the violence that it can be regarded as one act/transgression

S v Sithole

Facts: The accused snatched a woman's handbag which she was carrying. He was convicted of robbery. The case went on a review.

Legal question: Whether the facts admitted by the accused constitute **robbery** opposed to **theft**

Decision of the court: The conviction of **robbery** was confirmed.

Reason: If enough force is used to **overcome** any **resistance** or to prevent any **resistance** from the victim, the conduct constitutes **robbery**

S v Seekoei (presence)

Facts: Seekoei was charged with **robbery** after he had broken into the home of the complainant and by threats had forced her to hand over the keys of her shop. He then tied the complainant to a pole and, taking her car, drove to the shop, which was some 2 kilometres away. There he removed money and other goods. The trial court **acquitted** him on the charge, since the taking of the property did not take place in the **presence** of the complainant. A question of law was reserved.

Legal question: Whether the **taking/theft** should take place in the **presence** of the victim?

Decision of the court and reason for the decision: No, this requirement is no longer part of South African criminal law. As long as there is a **link** between the **violence** and the **theft**, it is sufficient for a conviction of **robbery** {If **violence** is applied with the intent to commit the **theft** (and it happens in one continuing **transgression**), it is sufficient for a conviction of **robbery**}.

FRAUD

S v Myeza

Facts: The accused took a beer-can ring and put it into a parking meter to register that the accused was entitled to park his vehicle in the relevant parking bay. He was **convicted** of **fraud** and appealed.

Legal question: Whether the conduct of the accused amounted to **fraud**?

Decision of the court and reason for the court's decision: Yes, conduct amounts to **fraud**

Reason: There was a **misrepresentation** (even though to a parking meter) and the **misrepresentation** caused **prejudice**/potential **prejudice** to the municipality because it was impossible for the officials of the municipality to enforce the parking laws.

S v Mngqibisa

Facts: The appellant had been convicted of **fraud**. He had falsely represented to J, employed by a company which managed and administered insurance claims, that at the time of the collision, which was the subject of the insurance claim, **he himself** had been the driver of his motor car, whereas in fact, his **wife** was. His **wife** had only a **learners** driver's license and there was an additional excess payable in the case where his **wife** was involved in a collision. He appealed against his conviction of **fraud**

Legal question: Whether the accused was correctly convicted of **fraud**?

Decision of the court and reason for the court's decision: Yes, the conviction of **fraud** was confirmed.

Reason: There was a **misrepresentation** (originally false information was given) that caused potential prejudice to the insurance company.

R v Dyonta

Facts: The accused presented pieces of glass as diamonds for sale to the complainant. The complainant had knowledge about diamonds and did not buy the pieces of glass. The accused were convicted of **fraud** and appealed against the conviction.

Legal question: 1) Whether the judge was correct in law in holding that the 2 accused committed the crime of **fraud**? 2) Was there **potential** prejudice? 3) What test do we apply in order to determine **potential** prejudice?

Decision of the court: 1) The conviction of **fraud** was **confirmed** 2) Yes, there was **potential** prejudice in this case scenario. 3) An **objective** test is applied to determine **potential** prejudice. The question is whether in the ordinary course of events, the conduct of the accused is capable of deceiving an **ordinary/reasonable** person?

EXTORTION

R v N

Facts: The accused, a policeman, threatened persons conducting an illegal lottery (Fah Fee) with arrest and prosecution unless they **paid** him **money**. One person **paid** and the others **refused**. The accused was convicted of **extortion** and **attempted extortion**. He appealed against the conviction.

Legal question: Was the conduct of the accused **unlawful**? (He was a police officer, and it was part of his job to arrest people)

Decision of the court: Yes, the conviction of **extortion** and **attempted extortion** was confirmed.

Reason: The police officer exercised **pressure** on the victims with the aim of obtaining an **advantage** that was not due to him.

S v J 1980(4) SA 113 (E)

Facts: The accused threatened the complainant that he would show nude photographs of her to her parents unless she allowed him to take more nude photographs of her. The complainant refused. He was convicted of **attempted extortion** (in the district court) and appealed (to the High Court) against the conviction.

Legal question: Does the **advantage** have to be of a **patrimonial** / **economic nature** nature?

Decision of the court: No, the conviction of **attempted extortion** was confirmed.

Reason for the decision: The **advantage** can be of any **nature**. Obtaining more nude photographs will qualify as an **advantage**.

MALICIOUS INJURY TO PROPERTY

R v Bowden

Facts: Appellants had been convicted on a charge of **malicious injury to property** in that they had damaged 2 statues by smearing paint on them. The evidence had revealed that it had cost the municipality a certain amount to have the paint removed and the statues restored to their original condition. They appealed against the conviction.

Legal question: Should there be **permanent** injury for a conviction of **malicious injury to property**?

Decision: No, the conviction of **malicious injury to property** was **confirmed**.

Reason: If it causes **expenses** or **effort** to the owner to restore the property to the **original** condition, it is sufficient for a conviction of **malicious injury to property**.

R v Malamu Nkatlapan

Facts: The accused, intending to steal a sheep killed the animal. He was convicted of malicious injury to property. The case went on review.

Legal question: If there was intent to steal, is a conviction of malicious injury to property possible?

Decision: Yes, the conviction of malicious injury to property was confirmed.

Reason: All the elements of malicious injury to property were present. The court was satisfied that the person (by killing the sheep), also foresaw the possibility (dolus eventualis) of causing damage to the property of another.

Arson

R v Mavros

Facts: The appellant was convicted of arson in that he wrongfully and maliciously set on fire his own store with intent to burn it and to defraud a certain insurance company of the money for which it had insured the said store and the goods therein contained.

On a point of law reserved by die presiding officer:

Legal question: Can one be convicted of arson for setting fire to his own immovable property?

Decision: Yes, conviction of arson was confirmed.

Reason: It still amounts to arson where you set your own immovable property alight with the intention to fraud someone else. Kindly note that FRAUD would have been a more appropriate charge!

S v Dalindyabo (2016)

Facts: The appellant (king of a tribe in Eastern Cape) was charged with various counts including 3 counts of arson. The 3 counts of arson were based on the fact that he had set fire to the dwellings of 3 of his subjects (and tenants) in order to secure their eviction for having breached his rules. He appealed against his convictions and sentence.

Legal question Whether he could be convicted of arson for setting alight structures that acceded to his land and belonged to him?

Decision and reason for the court's decision: yes, conviction of arson was confirmed.

Reason: Arson can be committed where a person sets fire to his own immovable property with the intention to prejudice the property interest of another person.

HOUSEBREAKING WITH INTENT TO COMMIT A CRIME

S v Small (removal of

Facts: Accused pleaded guilty on a charge of housebreaking with the intent to commit theft and theft. He had put his hands through an open window and took a speaker which he could see was standing at the window. He pushed the curtains out of the way in order to take the speaker. He was convicted of housebreaking with the intent to commit theft and theft. The case went on review.

Legal question: Did the accused remove an obstruction?

Decision of the court and reason for the court's Decision: No, the conviction of housebreaking with the intent to commit theft and theft was aside and replaced by a conviction of theft only.

Reason: The obstruction that is removed or displaced must be part of the structure of the building and curtains do not qualify.

S v Mavela (entering)

Facts: The accused was charged with and convicted of housebreaking with the intent to commit theft. He broke a window of a house and was about to enter when someone saw him, and he changed his mind. The case went on review.

Legal question: Whether the conduct of the accused complied with the entering element of housebreaking?

Decision of the court and reason for the court's Decision: No, the conviction of housebreaking with the intent to commit theft was set aside and replaced by one of attempted housebreaking with the intent to commit theft.

Reason: There was no evidence that the accused had already inserted any part of his body or his hands into the premises.

S v Temmers (building)

Facts: The accused broke into a caravan and stole stock. (Chocolates and groceries) The caravan was used as a shop – did not move around He was convicted of housebreaking with the intent to commit theft and theft. The case went on review.

Legal question: Did the caravan qualify as a building for purposes of housebreaking?

Decision of the court and reason for the court's Decision: The case was remitted to the magistrate court for the prosecutor to prove that it qualifies as a building in this specific case.

Reason: The caravan had a relative degree of permanency, but the court was not satisfied that this element was proven.